Supreme Court, U.S.
FILED

97.162 JUL 22 1997

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No:

In the

Supreme Court of the United States

October Term, 1997

EDWARD G SPRANGER,
Petitioners

V.

MARVIN RUNYON POSTMASTER GENERAL,
Respondent

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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THE QUESTION PRESENTED

I. This court should grant the PETITION FOR WRIT OF CERTIORARI to clarify and resolve the question of whether the district court has jurisdiction of any civil action arising under any Act of Congress relation to the Postal Service, which the court of appeals grossly misapplied.

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In the

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October Term, 1997

EDWARD G. SPRANGER
PETITIONERS

V.

MARVIN RUNYON POSTMASTER GENERAL
RESPONDENT

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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The Petitioner Edward G. Spranger respectfully prays that the Writ of Certiorari issued to review the judgment and opinion of the United States Court of Appeal for the Ninth Circuit entered on April 28, 1997.

Opinions

The court of Appeal's Opinion is reprinted in the appendix hereto, page 21

The District Court' Decision is reprinted in the appendix hereto, Page 23

JURISDICTION

The final judgment of The Court of Appeals for the Ninth Circuit was entered on April 28, 1997, this Court has jurisdiction to review the judgment of the Court of Appeals for the Ninth Circuit Pursuant to 28, U.S.C. 1254 (1)

STATEMENT OF FACTS

The Petitioner Edward G. Spranger worked for the U.S. Postal Service at the General Mail Facility in Sacramento, California in the late 1980s as a distribution clerk. On October 6, 1988, petitioner re-injured his back and filed a claim for compensation pursuant to the Federal Employee's Compensation Act (FECA). The next day on October 7, 1988, the petitioner's supervisor charge the petitioner with failure to follow his instructions to return to the Postal Service's medical unit for a second medical examination for petitioner's on the job injury before leaving work on October 6, 1988. The petitioner answered his supervisor' s charges that it was his understanding, of written OWCP's

instruction for an On the Job Injury given to him by his supervisor, that (1) absence from work was covered under FECA (2) petitioner's rights under FECA that the agency could not order or conduct medical examination for his on the job injury and that petitioner could choose his own doctor.

On October 26, 1988, the Postal Service rejected the Petitioner's reasons and removed the Petitioner from employment for Failure to Follow Instruction and Absence without Leave (AWOL). A grievance and an EEO complaint followed.

On February 1, 1989, the Office of Workers' Compensation Programs (OWCP) issued an order, that the Petitioner lost all entitlements to compensation under the FECA because of his misconduct stated by his employer and recommend that the petitioner apply for restoration rights under FECA. Petitioner appealed to Secretary of Labor to review and overturn OWCP's decision.

On February 24, 1989, the Postal Service rejected the Petitioner's request for restoration

rights under FECA because of **OWCP's Order of February 1, 1989 which states that the Petitioner lost all entitlement to compensation under FECA.** An appealed to the Merit Systems Protection Board (MSPB) to reverse the Postal Service's decision on restoration followed. The MSPB affirmed the Postal Service's motion to dismiss the petitioner's appeal for lack of jurisdiction and made no decision **on merit.** The Petitioner did not appeal the MSPB's decision to the U.S. Court of Appeal for The Federal Circuit because of OWCP's Decision of February 1, 1989 (Petitioner lost all entitlement to compensation under FECA); therefore, Court of Appeals would not hear the **merits of the petitioner's case on appeal and it would be mere exercise in futility.**

Because the petitioner is a preference eligible Vietnam Veteran, the petitioner is entitled to file a grievance, EEO complaint and MSPB appeal at the same time.

On October 8, 1989, the union arbitrator issued

his decision affirming the Postal Sevice's position that OWCP's Decision of February 1, 1989 clearly established that the Petitioner has no entitlement to FECA: and therefore, the Petitioner's removal was for just cause.

On September 15, 1989, the Postal Service issued it's decision on the EEO/MSPB complaints. A timely MSPB appeal followed.

In the middle of MSPB appeal, the Secretary of Labor issued an order on December 19, 1989 to the Postal Service to vacate OWCP's Decision of February 1, 1989. The petitioner's claim is now being accepted and ordered the Postal Service to pay compensation and all other entitlements under FECA Title 5 USC 8101 et seq. The Postal Service failed to comply.

On February 20, 1990, MSPB issued its decision sustaining the Petitioner's Removal from the Postal Service; applied the Doctrine of Res Judicata to the petitioner's restoration claims (first MSPB appeal,

the Board lacked jurisdiction and dismissed the appeal without judgment on Merit); and also applied the Doctrine of Collateral Estoppel to the Union Arbitration Decision. Judicial review of the MSPB's decision pursuant to 5 USC 7703 followed in District Court.

On April 24, 1992, the United States District Court for the Eastern District of California issued a judgment in favor of the Postal Sevice. (1) The MSPB had not erred in applying the doctrine of Res Judicata to the Petitioner's restoration claim. (2) The MSPB had not erred in applying the doctrine of collateral estoppel, because new evidence of compensation by the Secretary of Labor, dated December 19, 1989 is irrelevant. An appeal to 9th Circuit of Appeals, followed.

On November 24, 1993, the Court of Appeals affirmed the District Court Decision because MSPB regulations do not require the MSPB to determine first that an employee had an injury that is compensable before it considers whether the

employee was terminated because of that injury.

Therefore, OWCP's determination that the petitioner's injury was compensable could not affect this decision and thus, was irrelevant. Writ of Certiorari was denied.

Because Postal Service failed / refused with OWCP's Order, the petitioner filed a new lawsuit in the United States District Court for the Eastern District of California on March 13, 1996, claiming that the Postal Service violated the petitioner's **civil rights under FECA (title 5 USC 8151; 8118; 8103); and asking the District Court to enforce the Department of Labor's Order of December 19, 1989 (which stated to vacate OWCP's previous order of December 1, 1988, including all records of that order) and order the Postal Service to reinstate all entitlements under Title 5 USC 8101 et seq to the petitioner.**

In the new law suit the petitioner asked for money, damages, and correction of records for the Postal Service violating the Petitioner's civil rights to

resume his former or equivalent position, as well as all other attendant's right which he would have had or acquired, in his former position if he had not been injured. The Petitioner claim under FECA, the Postal Service is required to 1) change Petitioner's two hours of AWOL to Sick leave as requested by the Petitioner; 2) prohibit the Postal Service from ordering the Petitioner to report to the Postal Service's medical unit to verify his injury; 3) requires the Postal Service to pay into the Petitioner's Civil Service Retirement fund 4) the petitioner's conduct on October 6, 1988, was protected under FECA.

The petitioner is seeking damages and remedy for a personal injury sustained while in the performance of his duty. The petitioner's claims for sick leave, withdraw charges of insubordination for failure to submit to a medical examination, reistatement with back pay and other benefits lost, and corrections of all applicable records, are inherently work related. Liability created both by

negligent and intentional acts on the part of the Postal Service is recoverable under the FECA.

On September 6, 1996, District Court dismissed the petitioner's law suit because the petitioner was seeking a remedy provided by the Civil Service Reform Act (CSRA). Although he couches his complaint in terms of the FECA, in fact he is challenging **personnel decisions,** and is not seeking worker's compensation benefits. Claims regarding suspension of pay, or to change a record of absence without leave, and reinstatement to a federal position are within the scope of the CSRA. Because petitioner is seeking relief available only through the procedure provided by the CSRA, these claims are dismissed. Finally, even if petitioner's claims arise solely under the FECA this court lacks jurisdiction over these FECA claims. 5 USC 8128 (b) An appeal to the United States Court of Appeals For the Ninth Circuit followed because the petitioner's claims are recoverable under FECA and not under CSRA.

On April 28, 1997, the Court of Appeals affirmed the reasons stated by the District Court and dismissed the petitioner's appeal for lack of jurisdiction over his action under the FECA, seeking sick leave, back pay, expungement of records and reinstatement rights.

Reasons for Granting the Writ

I. This court should grant the Petitioner's Writ of Certiorari to clarify and resolve the question of whether the district court has jurisdiction of any civil action arising under any Act of Congress relating to the Postal Service, which the Court of Appeals grossly misapplied.

Section 409 of the Postal Reorganization Act of 1970, entitled "**Suits by and against the Postal Service, " Provides:**

(a) except as provided in section 3628 of this title [governing appeals of postal rate making], the United States District Courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a state court to which the Postal Service is a party may be removed to the appropriate United States District Court Under the Provisions of chapter 89 of title 28.

28 U.S.C. 1339 The District Court shall

have original jurisdiction of any civil action arising under any Act of Congress relating to the Postal Service.

Statute 39 U.S.C. 409(a) (1988) and 28 U.S.C. 1339 language is plain and unambiguous. It grants the District Court jurisdiction over the petitioner's complaint since it is an action brought against the Postal Service and it does not fall within the exception at the beginning of the sentence. This court had no qualms about review judgments against the Postal Service when jurisdiction was predicated on section 409(a). Franchise Tax Bl. v United States Postal Service, 467, U.S 512,514, 104 S.Ct 2549,81 L.Ed.2d 446 (1984) (permitting suit against Postal Service for refusing to comply with administrative order to withhold state taxes and noting jurisdiction was predicated on 409(a). Like Franchise Tax Bl., the petitioner filed suit against the Postal Service for refusing an administrative order from the Department of Labor to vacate a previous order denying Petitioner' right

to FECA and to reinstate all entitlements under FECA. Most of the other circuits found that section 409(a) is what it seems to be a grant of jurisdiction to the district courts for suits in which the Postal Service is a party. Continental Cablevision, 945 F.2d at 1437; American Postal Workers Union v. United States Postal Service, 830 F.2d 294, 313 n. 33 D.C. Cir. 1987; Insurance Co. of North America v. United States Postal Service, 675, F.2d 756,7 57-758 5th Cir. 1982; Kennedy Elec. Co. v. United States Postal Service, 508 F.2d 954, 955 10 th Cir. 1974; White v. Bloomberg, 501 F.2d 1379,1384 n. 6 4th cir. 1974. Long before Congress reorganized the Postal Service, this Court consistently interpreted **"sue and be sued"** in statutes creating federal corporations agencies and instrumentalities as a general waiver of the sovereign's immunity as to the entity. Keifer & Keifer v R. F. C. 306 U.S. 381, 59 S.Ct. 516, 83 L.Ed. 784 (1939)

There is no question that the petitioner properly

named the Postal Service as the entity responsible and an Act of Congress (civil right under FECA). Under literal terms of 39 U.S.C. 409(a) and 28 U.S.C. 1339 the District Court has jurisdiction. As this Court held in Bell v. Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 776, 90 L.Ed.939 (1946), once the issue of jurisdiction resolved, there still remains the question whether the suit raises issues amenable to judicial resolution, in other words does jurisdiction allow the petitioner to bring his claims to the District Court. The question to be resolved is whether the petitioner's claims permit judicial review. In this case the petitioner is asking the District Courts to determine if the Postal Service violated an adminstrative order by the Dept. of Labor. As this court consistently held **that the FECA provides the sole remedy of an employee against the United States for on the job injury.** Dahn v Davis 1922, 258, U.S. 421, 42 S. Ct. 320, 66 L. Ed. 969. In granting FECA rights, the administrative remedy is exclusive, and that the decision of the Department

of Labor is not subject for review by other agencies or the Courts.

Without question The Department of Labor is vested with primary jurisdiction to make the determination of entitlements under the FECA. Like Franchise Tax Board of California, the petitioner claims that the Postal Service refused to comply with administrative process (Department of Labor order) which required the Postal Service to vacate OWCP prior order of February 1, 1989 (petitioner lost all entitlements under FECA) and reinstate all entitlements under FECA (petitioner's right to use sick leave, refuse Postal Service medical examination, payment for lost wages and to resume employment).

In Franchise Tax Bd. v. Postal Service this court held that " In operation and effect orders of the California Franchise Tax Board to withhold are identical to judgment of court, giving rise to binding legal obligation to pay the assessed amounts, and taxpayer may no more dispute this liability than

liability under other judgment. Congress intended that the Postal Service be treated similarly to other self-sustaining commercial ventures, and when California Franchise Tax Board served process on Postal Service ordering it to withhold delinquent amounts from employees's wages pursuant to provision of the California Revenue and Taxation Code, Postal Service was " sued" within meaning of federal statute providing that the Postal Service "sued and be sued in its official name" and was required to respond to such process." Like Franchise Taxes Board, the Department of Labor served process on the Postal Service ordering to complied with the FECA and pay the Petitioner's claim for worker's compensation. Like Franchise Taxes Board, the petitioner sued the Postal Service in it official name to comply; and therefore, the Postal Service is required to respond to such process.

Finally, this court held in Barrentine v. Arkansas Best Freight System inc. 450 U.S. 728, 101 S.Ct. 1437, 67 L.Ed 641 (1981) Because Congress

intended to give individual employees the right to bring their minimun wage claims under the FLSA (Fair Labor Standards Act) in court, and because these congressionally granted FLSA rights are best protected in a judicial rather than in an arbitral forum we hold that petitioners' employees claims is not barred by the prior submission of their grievances to the contractual dispute resolution procedures. Like Barrentine, the petitioner's right to compensation from the Postal Service for on the job injury is administered by the Secretary of Labor designees in allowing or denying any payment and entitlements under FECA. Congress intended to give individual employees the right to bring their on the job injury claims to the Department of Labor and its decision is exclusive and not subject for review. These FECA rights are best protected by the Secretary of Labor and this administrative order is best protected in a judicial rather than in an arbitral forum. Thus, Congress did not intend for the Civil Service Reform Act (CSRA) which is an arbitral

forum to permit suit against Postal Service for refusing to comply with administrative order.

Conclusion

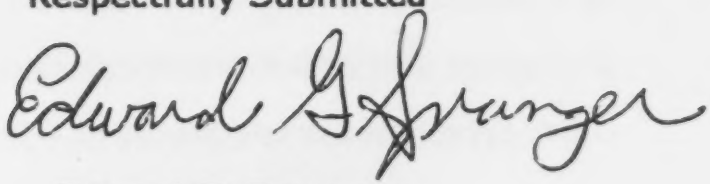
Congress made it clear in the Postal Reorganization Act of 1970 that the Postal Service was essentially to be separate from the government. Indeed, the Act provides that the Postal Service is empowered to sue and be sued in its own name, 39 U.S.C. 401 (1) and that the district court have original jurisdiction virtually all such actions. 39 U.S.C. 409(a). Statue 28 U.S.C. 1339 grant district court jurisdiction over any civil action arising under any Act of Congress relating to the Postal Service. Therefore, this court should grant the Petitioner's Writ of Certiorari to resolve conflict with this court's precedent and other circuit decisions. The appeals court grossly misapplied that the petitioner is 1) seeking to relitigate his termination, 2) challenging personnel decisions and not seeking worker's compensation entitlements for on the job injury, 3) on the job injury claims are the exclusives remedy

under the Civil Service Reform Act, thus barring district courts with jurisdiction.

To reduce it to basic form, does the district court have jurisdiction over the petitioner claims that the Postal Service refused to comply with administrative order. That this issue was resolve by this court in Franchise Tax Board of California v. United States Postal Service 467, U.S. 512, 514, 104 S. ct 2549, 81 L.Ed . 2d 446 (1984) (permitting suit against the Postal Service for refusing to comply with administrative order)

For the foregoing and reasons stated above, the Petition for granting certiorari should be granted.

Respectfully Submitted



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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD G. SPRANGER,

PLAINTIFF-APPELLANT,

V.

MARVIN T. RUNYON, POSTMASTER

GENERAL, DEFENDANT-APPELLEE

MEMORANDUM

NO.96 - 16934

D.C. NO. CV-96-00508-DFL

Appeal from the United State District Court for the Eastern District of California David F. Levi, District Judge, presiding

Submitted April 21, 1997

Before: BROWNING, THOMPSON and HAWKINS, Circuit Judges

Edward G. Spranger appeals pro se the district court's dismissal for lack of jurisdiction over his action under Federal Employees Compensation Act,

5 U.S.C. 8101 et seq., seeking sick leave, back pay, expungement of his personnel records and reinstatement to his former employment with the United

States Postal Service. We affirm for the reasons stated by the district court in its Order filed on September 6, 1996.

AFFIRMED

FILED On April 28, 1997

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD G. SPRANGER,

Plaintiff,

V.

MARVIN RUNYON, POSTMASTER GENERAL, Defendant

NO: CIV-S-96-508 DFL GGH

September 4, 1996

RE: Order

United States District Judge

David F. Levi

In this action, plaintiff Edward G. Spranger seeks to relitigate the question of whether he should be reinstated to the position from which he was terminated over seven years ago. This court has no jurisdiction over Spranger's claim.

I. PROCEDURAL HISTORY

On October 6, 1988, plaintiff Edward G. Spranger complained to his supervisor that he had

injured his back. He was referred to the medical unit, then returned to work. Approximately six hours later, Spranger asked his supervisor for sick leave for the remainder of the day. His supervisor asked him to go to the medical unit, to determine the extent of Spranger's potentially work-related injury. Spranger refused, and left the postal facility without visiting the medical unit as instructed.

On November 28, 1988, Spranger was terminated from his position. The termination was based on his extensive history of insubordination, and the specific incident on October 6 where Spranger left without permission.

Spranger sought reinstatement to his former position. The Postal Service denied reinstatement on the grounds that Spranger had been terminated for just cause. The Merit Systems Protection Board denied Spranger's appeal. Spranger also appealed his termination through the Postal Service's Equal Employment Opportunity process, claiming race,

sex, physical handicap, and reprisal discrimination. A union grievance was also filed. Both the EEO proceeding and union grievance upheld Spranger's termination. The EEO proceeding was appealed to the Merit Systems Protection Board, which upheld the termination. This decision was appealed to the EEOC, which found no discrimination.

Meanwhile, on December 19, 1989, Spranger obtained an order from the Office of Workers' Compensation Programs authorizing compensation for his October 6, 1988 wor injury. See "Objection to Defendant's Motion to Dismiss." Exh. B.

Spranger then filed suit in United States District Court. In his complaint, Civ.-S-90-1595 DFL, Spranger alleged among other things that (1) "the Postal Service abused its discretion by refusing to restore plaintiff to his job," and (2) "the MSPB erred in finding the plaintiff is not entitled to restoration to his Postal Service job (restoration claim) . . ." Order (in Civ. - S- 90- 1595) filed July 31, 1991, p.5, attached as Exh. A to Mot. to

Dismiss. Each of his claims for restoration were dismissed, including a claim that the MSPB should have granted him reinstatement because of the December 19, 1989 OWCP order.

Spranger appealed the dismissal of the district court action. The Ninth Circuit affirmed. The Ninth Circuit specifically rejected Spranger's argument that "he is entitled to be restored to employment under the Federal Employees Compensation Act, 5 U.S.C. 8101, 8151, because he recovered from a work-related injury within a year of his discharge." Memorandum Op. of Ninth Circuit in Civ. -S-90-1595, attached as Exh. C to Mot. to Dismiss, p.2.

A year and a half later, Spranger filed suit here, seeking restoration to his former position, a change of records changing his "absent without leave" to "sick leave" (eliminating the basis for his discharge, and thus entitling him to reinstatement), and a payment to the retirement fund.

II ANALYSIS

The Civil Service Reform Act ("CSRA") creates "a single unified personnel policy which takes into account the requirements of all the various laws and goals governing Federal personnel management." See Saul v. U.S., 928 F.2d 829, 833 (9th Cir. 1991) (quoting legislative history). The act provides a procedure by which federal employees can challenge the personnel decisions of their supervisors. Id. The CSRA creates a merit system for federal employees, that protects employees from arbitrary action and personal favoritism. Id. Because it provides a comprehensive remedy for federal employees challenging adverse employment decisions, the CSRA preempts all claims for actions within its scope. Id.

Here, Spranger is seeking a remedy provided by the CSRA. Although he couches his complaint in terms of the Federal Employees Compensation Act ("FECA"), in fact he is challenging personnel decisions, and not seeking worker's

compensation benefits. Claims for reinstatement to a federal position are within the scope of the CSRA. Id.

Claims regarding suspension of pay, or to change a record of absence without leave, are likewise within the scope of the CSRA. Green v. Hill, 954 F. 2d 694 (11th Cir. 1992); see also Saul v. U. S., 928 F.2d 829,833 (9th Cir. 1991). Because Spranger's complaint seeks relief available only through the procedure provided by the CSRA, these claims are dismissed.

Spranger is required to make these claims, even if they are based on FECA, within the remedial system established by the CSRA. See American Postal Workers Union v. USPS, 940 F.2d 704, 709 (D.C.Cir. 1991) (CSRA is exclusive remedy for postal workers challenging their discharge, whether their claim is based on Postal Reorganization Act, CSRA, or FECA). Indeed, Spranger cites six cases in which claims based on

5 U.S.C. 8151 (a FECA provision) were litigated through the CSRA procedure before the Merit Systems Protection Board. Crawford v. Veterans Affairs, 22 M.S.P.R. 380 (1984); Mainor v. Dept. of 28the Navy, 38 M.S.P.R. 528 (1988); Stith v. DHUD, 21 M.S.P.R. 328 (1884); Polk v. Dept of Army, 40 M.S.P.R. 539 (1989); Green v. Dept. of Army, 38 M.S.P.R. 52 (1988); Raicovich v. USPS, 675 F.2d 417 (D.C.Cir. 1982)

Spranger claims that this suit is authorized by the general jurisdictional statute conferring jurisdiction over cases involving the Postal Service, and that he has "exhausted all the administrative remedies available to him." Complaint, 5. However, "the arbitral and administrative procedures recognized and created by the CSRA . . .are the exclusive means of redress from a discharge from federal employment . . , thus barring independent federal district court jurisdiction under other statutes altogether." Carter v. Kurzejeski, 706 F.2d 835, 839 Cir(8thCir.1983)

Finally, even if Spranger's claims arise solely under FECA this court lacks jurisdiction over these claims. See 5 U.S.C. 8128(b). This court also notes that plaintiff raises matters in this litigation which should have been raised, if at all, in the prior federal court complaint.

III CONCLUSION

Plaintiff Spranger seeks to relitigate matters previously decided against him. For the reasons stated above, the complaint is DISMISSED. Judgment shall be entered accordingly.

IT IS SO ORDERED.

SEPTEMBER 4, 1996

DAVID F. LEVI

United States District Judge